United States Department of Labor Employees' Compensation Appeals Board

J.N., Appellant	
and) Docket No. 19-1847) Issued: April 30, 2020
DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, New York, NY, Employer	
Appearances: Alan J. Shapiro, Esq., for the appellant ¹) Case Submitted on the Record

Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge PATRICIA H. FITZGERALD, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On September 3, 2019 appellant, through counsel, filed a timely appeal from a July 25, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1847.²

On March 11, 2019 appellant, then a 46-year-old special agent/criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2019 he strained the lumbar region of his back and experienced pain when he stood up from his desk and picked up a heavy

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that, following the July 25, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id*.

case file while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty.

By decision dated June 12, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed cervical and lumbar conditions and the accepted February 6, 2019 employment incident, as the medical evidence did not differentiate between the claimed injury and appellant's preexisting injury. On July 16, 2019 appellant requested reconsideration. By decision dated July 25, 2019, OWCP denied modification of its June 12, 2019 decision.

The Board notes that appellant has prior accepted OWCP claims for lumbar and cervical conditions. Under OWCP File No. xxxxxx508, OWCP accepted his claim regarding a September 3, 2004 traumatic injury for the conditions of neck sprain and strain and cervical subluxation. Additionally, under OWCP File No. xxxxxxx533, it accepted appellant's claim regarding a May 31, 2012 traumatic injury for the condition of aggravation of a preexisting L3-L4 annular tear.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.³ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁴ Herein, appellant has an accepted claim for neck sprain and strain and cervical subluxation, assigned OWCP File No.xxxxxxx508, and an accepted claim for aggravation of preexisting L3-L4 annual tear, assigned OWCP File No. xxxxxxx533. He subsequently filed a traumatic injury claim for the same body parts on March 11, 2019, assigned OWCP File No. xxxxxxx621, which is the claim presently before the Board. The evidence pertaining to OWCP File Nos. xxxxxxx508 and xxxxxxx533, however, is not part of the case record presently before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx508 and xxxxxx533 so it can properly determine whether appellant has established that his diagnosed cervical and lumbar conditions were causally related to the accepted February 6, 2019 employment incident. Following this and other such further development as OWCP deems necessary, it shall issue a de novo decision. Accordingly,

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁴ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

IT IS HEREBY ORDERED THAT the July 25, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 30, 2020 Washington, DC

> Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Alternate Judge Employees' Compensation Appeals Board

> Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board